

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

MARLENE G. MEYER,

Plaintiff,

-vs-

 COPYARG ENTERPRISES, INC. aka STUART
ANDERSON'S CATTLE COMPANY
RESTAURANTS,

Defendant.

Case No. 3:05-cv-00239-TMB /

DEPOSITION OF RICHARD BUTTON

Pages 1 - 44 inclusive

September 28, 2006, 10:00 a.m.

Anchorage, Alaska

Exhibit CPage 1 of 6 Pages

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1 **Q. If you recall when you visited?**
 2 A. I don't recall. I know that I picked up
 3 Mrs. Meyer and went over there to make sure that I
 4 understood where the spot was. And that was -- seems to
 5 me there was, at that point there was snow on the ground.

6 **Q. Did you take any photographs?**

7 A. Yes, I did.

8 **Q. Is this your only --**

9 A. Here they are.

10 **Q. Is this your only copy?**

11 A. You can mark it as an exhibit. I'll make a note
 12 to recopy those.

13 (Exhibit 4 was marked.)

14 BY MR. EARNHART:

15 **Q. Looking at the photographs in Exhibit 4, did Ms.**
 16 **Meyer identify exactly where she fell to you?**

17 A. Yeah.

18 **Q. And could you identify in those photographs, it**
 19 **looks like they've got JPG numbers underneath each photo?**

20 A. Yeah, it was, the general picture would be
 21 2555.JPG.

22 **Q. As for a specific location or a specific piece**
 23 **of cement or the sidewalk, did she identify?**

24 A. Well, it's hard to see -- it's hard to see from
 25 here. But it's -- it's back here, right next to the --

1 here, which she was traveling out of the building
 2 traveling east on her way to her car, which is parked on
 3 that side of the building. And she tripped on the edge
 4 of the sidewalk that was running along the north face of
 5 the building and was -- became part of the other
 6 sidewalk, intruded into it, I guess, by a little bit, by
 7 about two or three feet.

8 **Q. She tripped on the east edge of that?**

9 A. Yeah, she tripped -- well, she tripped on the
 10 west edge of the sidewalk section that was running along
 11 the east side of the building.

12 **Q. In regard to that seam that we're talking about,**
 13 **is it fair to say there's just one piece of cement there**
 14 **that has the tapered edges to it? Do you recall that?**

15 A. There's one piece of concrete that -- one large
 16 section that's probably four-by-six or eight and, yeah,
 17 where that extends into the sidewalk at the front of the
 18 building, it's raised slightly and there's a rounded edge
 19 there, yeah.

20 **Q. Okay. Along that, the east seam there, did she**
 21 **say -- was she more towards the north or more towards the**
 22 **south when she fell or did she describe it at all to you?**

23 A. No, she wasn't -- I don't remember her being
 24 real specific. It was just right in this area here,
 25 probably more -- I had the impression in talking with her

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1 it's better shown in this area right here.

2 **Q. You're referring to Exhibit 3?**

3 A. Right.

4 **Q. And --**

5 A. I have some other pictures -- I don't know, why
 6 they're not in the file -- that I can produce. These
 7 were just general background photos that were taken.

8 **Q. Okay.**

9 MR. EARNHART: Bob, can you produce those?

10 THE WITNESS: I'll get those.

11 BY MR. EARNHART:

12 **Q. Looking at Exhibit 3, the first page DEF 00001,**
 13 **did she identify specifically where she fell?**

14 A. Yeah, it was right in -- right here.

15 **Q. And you're pointing to --**

16 A. Pointing to a piece of sidewalk, a joint that's
 17 just beyond the corner of the building. I think it would
 18 be the northeast corner of the building. And it's where
 19 the sidewalk that runs along the east face of the
 20 building joins the -- and actually comes into the
 21 sidewalk that runs across the front of the building,
 22 which would be the north face.

23 **Q. Okay. In regard to that seam there, did she**
 24 **identify which edge she tripped on or --**

25 A. I -- if I remember correctly, it was this edge

1 that this was in this area here, more to the north end of
 2 this edge.

3 **Q. Okay. Did she describe her fall in any way, as**
 4 **to what foot tripped or --**

5 A. Not. What I remember, she just went over and
 6 hit her face, is what was told and what I remember.

7 **Q. Okay. Going back one step, have you taken any**
 8 **courses or done any study in human factors or any of that**
 9 **area as to how people react and how bodies react?**

10 A. No.

11 **Q. Have you taken any courses or any classes or**
 12 **seminars specifically in regard to sidewalk design?**

13 A. Well, we're -- I guess specifically, no. I'm
 14 sure they must exist, but generally speaking, civil
 15 engineers are grounded in general principles of concrete
 16 and design and code requirements, and we take off and do
 17 it. I mean, I've written specs for sidewalks over my
 18 years of practice and they're pretty standard, pretty
 19 bump and grind stuff, nothing real special about them.

20 If you want to get into super flat floors for
 21 warehouses, that's a different story, but sidewalks are
 22 pretty straightforward.

23 **Q. When you say straightforward specs, what kind of**
 24 **specs go into a sidewalk?**

25 A. Well, you've got several sections. Obviously,

7 (P C s 22 to 25)
 Exhibit _____

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1 It's just kind of fine tuning that drives you nuts that
2 happens.

3 In general, things move forward pretty much the
4 same. They very seldom go back and make anything less
5 restrictive.

6 **Q. But sitting here today, you can't point to any**
7 **provisions within the 2003 IBC code that reference the**
8 **accessibility standard similar to 4.52 of the ADA --**

9 A. Sitting here in this room right now, no. With
10 a -- given a few minutes with the code, I could probably
11 produce that, certainly for trial.

12 **Q. When you measured the difference in height at**
13 **this particular location, how do you do your**
14 **measurements? Is it from the bottom of the crack between**
15 **the two pieces of cement or is it from a different point?**

16 A. Yeah, it would be basically from -- if you've
17 got two pieces of concrete sidewalk, you'll measure from
18 the base of one to the top of the other. Basically top
19 to top, and whatever the difference is is what the
20 measurement would be.

21 **Q. Okay. In regards to the piece of concrete we're**
22 **dealing with here, it has a general flat surface but then**
23 **the edges are tapered about two or three inches out.**
24 **What counts as the top of that block of concrete for**
25 **measurement purposes?**

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1 A. I don't understand quite what you're saying, but
2 let's look at the picture.

3 **Q. For example, the last picture in Exhibit 3, you**
4 **can see the tapered edge where they used a cement tool.**

5 A. They flattened that out with a trawl.

6 **Q. They use a trawl and it tapers down the edge**
7 **about a quarter to a half an inch; is that consistent**
8 **with your memory?**

9 A. My memory is that that -- yeah, there's a gap or
10 drop there. I doubt -- it's probably not more than a
11 quarter inch, probably more than like an eighth.
12 Typically that's what they do.

13 For all intents and purposes, there's not much
14 difference between this, what you're calling a raised
15 section and the perimeter edge here. It's --

16 **Q. Let's assume that there was a significant**
17 **difference, what counts as the top of that cement -- that**
18 **piece of cement for measurement purposes?**

19 A. It would be the edge at the -- adjacent to the
20 slab.

21 **Q. What if the gap between the two slabs was, let's**
22 **say, four inches, does that present different issues as**
23 **far as measuring the height between the slabs?**

24 A. I'm not really prepared to discuss that. That
25 becomes a gap. And that affects the way people perceive

1 things. And -- yeah, that's -- to me, I don't have an
2 opinion on how that would affect my opinion.

3 **Q. Are there code provisions that apply to gaps?**

4 A. You're not supposed to have gaps in an exit or a
5 sidewalk. I mean, I guess that would be the provision
6 that would apply, you're supposed to have a continuous
7 flat surface.

8 **Q. But sidewalks are not continuous flat surfaces,**
9 **are they?**

10 A. They're supposed to be.

11 **Q. But they're not poured as one piece of concrete?**

12 A. That is correct. But as long as they butt
13 together, they're considered continuous.

14 **Q. When we say butt together, how close to do they**
15 **have to be together?**

16 A. Ideally -- that depends on the type of joint.

17 You've got expansion joints and control joints. In this
18 sidewalk here these appear, just looking at them, to all
19 be control joints. So they would have troweled down each
20 side and created a weakened plane by breaking this joint
21 down a third of the depth of the concrete, so that the
22 crack would occur in the joint, as opposed to into the
23 surface. I'm not sure quite what happened here.

24 I don't remember, and it's not obvious from this
25 photograph, this appears to be what would be called an

1 expansion joint. In that case they put a half-inch,
2 anywhere from a quarter- to a half-inch piece of mastic.
3 It's usually fiberboard impregnated with asphalt to allow
4 the -- for thermal expansion between the different
5 lengths of concrete so that you don't end up with a
6 buckle when it gets hot.

7 So sidewalks generally don't have a gap of more
8 than a half an inch, or they shouldn't if they're
9 constructed properly.

10 **Q. Is there any specific code provisions that**
11 **address that gap?**

12 A. No. I -- I -- other than the portions of the
13 code that say you're supposed to have a continuous
14 surface, and those provisions accept the reality of
15 construction, which is that you've got to have expansion
16 joints.

17 **Q. In regard to concrete, often the edges are**
18 **troweled one way or another. Are there any provisions**
19 **regarding how the edges of the concrete can be troweled,**
20 **what sort of curve or how much difference --**

21 A. No. Again, standard in the industry, I'm sure
22 if somebody was to go way out on a limb and put a
23 two-inch radius on the edges of their sidewalk, you know,
24 in the area of travel, that they probably would get
25 called by the Municipality.

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1 So you can go into any hardware store, Alaska
 2 Industrial Hardware, and buy trowels. They've got
 3 standard edges. What that radius is, I don't know. It's
 4 pretty much accepted by the industry and that's what you
 5 get. Probably quarter-inch radius, or something like
 6 that.

7 **Q. In this particular case the troweled piece of**
 8 **concrete, it's troweled differently than the adjoining**
 9 **pieces of concrete, correct?**

10 A. It appears that there was some attempt to fill
 11 in what was a flower bed or a planting area. And that
 12 that -- and I say that simply because the finish on that
 13 particular concrete was different than what you see
 14 everywhere else.

15 **Q. It appears to have been laid at a later date?**

16 A. Could be a later date. Certainly a different --
 17 at a different time.

18 **Q. It's right on that corner where people may have**
 19 **traveled over the flower bed, or something?**

20 A. It -- as I remember it, that extends all the way
 21 back -- that extends all the way back to the door. It
 22 looks to me like at one time they thought they wanted to
 23 have a planting bed in there. And the reality of it is
 24 it's on the north side of the building. And it's
 25 undercover. And things didn't grow well there. And they

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1 just ended up with an eyesore, so they filled it in. But
 2 I have no basis for that, other than just -- just knowing
 3 something about what grows up here, since that's one of
 4 my hobbies. And I suspect that's what happened.

5 **Q. I think it says in your report that it appears**
 6 **the pieces of cement had moved due to frost heaving**
 7 **and/or settling; is that your opinion?**

8 A. I'll have to go look and see what I said.

9 Yeah, I say it was not clear whether the
 10 difference was due to frost heave or settling of sections
 11 of the sidewalk.

12 **Q. Do you have any opinion at all as to why the**
 13 **difference in elevation exists?**

14 A. My guess is that it settled. And I say that
 15 because, looking at these pictures and looking at -- my
 16 pictures were taken in the winter. These pictures, I
 17 don't see any snow on the ground. And I've been there
 18 recently. And this is -- this piece of concrete's pretty
 19 much -- stayed as it shows there. So my guess is that
 20 there isn't any frost heave going on. And if there
 21 isn't, it probably was settlement.

22 **Q. Either frost heaving or settlement, are those**
 23 **uncommon in sidewalk situations here in Anchorage?**

24 A. Uncommon, no.

25 **Q. Had you ever been to this location prior to**

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1 **being retained in this case?**

2 A. Sure. My offices are right across the street.
 3 So -- although that -- and over the years the Cattle
 4 Company's been kind of a hangout, so it's gone through a
 5 lot of incarnations and I was part of some of those,
 6 so --

7 **Q. When you say you were part of some of those, did**
 8 **you ever participate at all in any of the design?**

9 A. Not any of the design. I participated in the
 10 partying that went on inside.

11 **Q. Had you ever noticed that piece of concrete**
 12 **before?**

13 A. No.

14 **Q. Any particular reason you would notice or not**
 15 **notice it?**

16 A. No.

17 **Q. Had you ever stumbled there before?**

18 A. No.

19 **Q. Do you think you had crossed that location**
 20 **before?**

21 A. Probably not. I usually don't park on this side
 22 of the building.

23 **Q. You said several times that sidewalks are**
 24 **supposed to be continuous surfaces. What provision of**
 25 **the code applies to that?**

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1 A. Well, the -- the sections that talk about
 2 exiting talk about landings being level surfaces or
 3 sloped surfaces, but not discontinuous surfaces.

4 **Q. Is this considered a landing, the location of**
 5 **this accident?**

6 A. The code often speaks to general areas that --
 7 that are then carried on forward. So -- so,
 8 in other words, it's understood that you're not going to
 9 have ups and downs in any means of egress. And this
 10 sidewalk would still be considered a means of egress from
 11 the building.

12 **Q. When does a landing or a means of egress become**
 13 **a sidewalk or something different?**

14 A. When you exit a building and the exit opens onto
 15 a sidewalk, then that becomes a means of egress.

16 And there are standards; specifications for
 17 sidewalks require that they be level, that there be no
 18 change in elevation between the different pieces of it
 19 after it's done. And slabs are the same way, they're
 20 required to be, you know, not more than quarter-inch out
 21 of level in ten feet so -- they're just -- obviously, if
 22 we have a sloping site, then sidewalks are going to slope
 23 with the site. But within that slope, they're supposed
 24 to maintain continuity of elevation, so that you don't
 25 trip. That's the whole point, is trying to not trip.

Exhibit 10 (C) es 34 to 37)

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1 **Q. I understand there are standards for making**
 2 **sidewalks. We talked about settling. We talked about**
 3 **freezing. I'm going to assume tree roots can push out**
 4 **pieces of sidewalk?**

5 A. Yes, they can.

6 **Q. Is that a code violation when the piece of**
 7 **sidewalk becomes unlevel with the adjoining piece?**

8 A. Yeah, I would -- I would say that it would be a
 9 code violation.

10 **Q. Is there any enforcement of those violations?**

11 **Is that something, you call the Municipality of Anchorage**
 12 **and they'll enforce the code?**

13 A. No. You could call them, and they probably
 14 should -- I -- I guess I don't have an opinion on that,
 15 because I haven't done it, so --

16 **Q. If you were the officer to say that this**
 17 **sidewalk was a code violation, what provision would you**
 18 **cite?**

19 A. I would go back to the sections that say that --
 20 that the maximum difference in elevation that you're
 21 allowed on any path of egress is a half-an-inch. And
 22 that happens at doorways or thresholds. And that's the
 23 exception that's made because, as a practical matter, you
 24 need to have a threshold in a doorway.

25 **Q. Now, in your report you cite section 1008.1.6**

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1 **for thresholds. Where is the provision that says**
 2 **sidewalks can't be out of level? Or that -- is there any**
 3 **provision that says -- that says this, the egress has to**
 4 **be continuous?**

5 A. There is a section. I guess the assumption is
 6 that -- and it's -- it -- I would have to go back and see
 7 if I could track down the section, but the assumption of
 8 all codes is that the floors are level. That's why you
 9 can walk across the lobby here and not end up with
 10 changes in floor level, even though it might be
 11 convenient, and have tripping hazards.

12 **Q. That's an assumption of the code, but it's not a**
 13 **provision of the code.**

14 A. Well, it is -- they have accepted the flatness
 15 at doorways. So they've given you -- they've allowed
 16 that there be a half-inch exception to flat when you walk
 17 through a door. I mean, otherwise you wouldn't be
 18 allowed that, otherwise you would have to have a flat
 19 level means of travel through doorways, which is
 20 impractical.

21 **Q. I'm not arguing what's smart design or what's**
 22 **good design.**

23 A. Sure.

24 **Q. But is there a provision that says we're going**
 25 **to have flatness? Is there a specific provision?**

1 A. I would say that, yes, there probably is. I
 2 don't have access to it here today. But I can tell you
 3 for sure that it is understood.

4 **Q. How about in this particular case at the Cattle**
 5 **Company, the curb out to the parking lot, that appears to**
 6 **be out of flat, that's an exception to the flatness of**
 7 **where people walk?**

8 A. You're allowed to have rises at stairs and curbs
 9 up to seven inches. So I'm -- I mean, so between your
 10 street and the typical height for a curb is six inches,
 11 but the code allows for stairways a maximum rise or
 12 height of seven inches.

13 **Q. Is there a minimum rise or height?**

14 A. I think it's four. I would have to go back and
 15 look. But, yes, they do have a maximum/minimum for the
 16 same reason, they don't want -- there is a certain level
 17 that people don't perceive well. And so you -- tripping
 18 becomes a problem, too, so they define a minimum stair
 19 riser height and a maximum.

20 **Q. When you say there's a point people don't**
 21 **perceive well, what is the basis of that opinion? What**
 22 **background --**

23 A. That's just general conversation with my
 24 colleagues over the years.

25 **Q. Any colleagues with particular psychological**

1 **training?**

2 A. No, just general conversation.

3 **Q. Engineering colleagues?**

4 A. And architectural colleagues.

5 **Q. Is there a minimum height for curbs? Is that**
 6 **the same as stairs, or --**

7 A. You know, I don't know if there's a minimum
 8 height. The Muni has standards for curbs. You can have
 9 a rolled curb. You can have a curb for handicapped
 10 access. And the -- I believe the -- I'd have to go take
 11 a look at the typical detail, I think it probably rolls
 12 down to about an inch or half-an-inch, something like
 13 that. Those are just standard details that are put out
 14 by the Muni.

15 And so the six inches works well. That's
 16 usually the curb that we adopt and use in our projects.

17 Although, as I said, they have specific details for --
 18 approved details for a handicapped access from a sidewalk
 19 to a street.

20 **Q. I think we're just about done. Just a second**
 21 **here.**

22 **You would agree this sidewalk is not a landing**
 23 **or a threshold; is that a fair statement?**

24 A. Uh-huh.

25 **Q. That's a yes?**

11 (Pages 38 to 41)

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1 A. Yes. Beyond the swing of the door, it's not.
 2 Q. Okay. I don't have any further questions.
 3 EXAMINATION
 4 BY MR. JURASEK:
 5 Q. Just one quick, regardless if there's an actual
 6 code violation, does this design of this sidewalk or its
 7 current condition create a trip hazard?
 8 MR. EARNHART: Foundation.
 9 THE WITNESS: In my opinion, yes.
 10 MR. JURASEK: No further questions.
 11 MR. EARNHART: All right.
 12 (Whereupon, the deposition was concluded
 13 and reading and signing of said deposition
 14 was not waived.)

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1 WITNESS CERTIFICATE
 2 MARLENE MEYER VS. ARG ENTERPRISES CASE NO. 3:05-cv-00239
 3 RICHARD BUTTON Taken September 28, 2006
 4 I hereby certify that I have read the foregoing
 5 deposition and accept it as true and correct, with the
 6 following exceptions:
 7 _____
 8 _____
 9 _____
 10 _____
 11 _____
 12 _____
 13 _____
 14 _____
 15 _____
 16 _____
 17 _____
 18 _____
 19 _____
 20 _____
 21 _____
 22 Date Read (Sign name here)
 23 _____
 24 (Use additional paper to note corrections as needed,
 25 dating and signing each one.)

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1
 2 REPORTER'S CERTIFICATE
 3
 4
 5 I, Britney E. Chonka, Court Reporter, hereby
 6 certify:
 7 That I am a Court Reporter for Alaska Stenotype
 8 Reporters and Notary Public in and for the State of
 9 Alaska at large. I certify Hereby that the forgoing
 10 transcript is a true and correct transcript of said
 11 proceedings taken before me at the time and place stated
 12 in the caption therein.
 13 I further certify that I am not of counsel to
 14 either of the parties hereto or otherwise interested in
 15 said cause.
 16 In witness whereof, I hereunto set my hand and
 17 affix my official seal this 10th day of October, 2006.
 18
 19
 20
 21 BRITNEY E. CHONKA, REPORTER
 22 Notary Public - State of Alaska
 23
 24
 25

Exhibit CPage 6 of 6 Pages

12 (Pages 42 to 44)